

REMARKS

Favorable consideration of this application in light of the following discussion is respectfully requested.

Claims 1-9 are pending in the application.

In the outstanding Office Action, Claims 1-5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over prior art of Figure 18B admitted by Applicant on Page 8 of the present specifications in view of Miyake (EP 1148716 A1); and Claims 6-9 were allowed.

Applicants gratefully acknowledge the indication of the allowable subject matter.

Applicants acknowledge with appreciation the telephone interviews between the Examiner and Applicants' representative on March 25 and 29, 2004. During the interview of March 29, 2004, the Examiner agreed that the outstanding Official Action was improper due to a typographical error that once again included Miyake as reference on which rejections under 35 U.S.C. § 103(a) were based. As in the telephone interview of February 23, 2004 regarding the Official Action of January 30, 2004, the Examiner again acknowledged that Miyake is not proper reference on which to base a rejection under 35 U.S.C. § 103(a).

As per the telephone interview, Applicants respectfully traverse the outstanding rejection of Claims 1-5. Applicants first note that EP 1148716 A1 of Miyake was published on October 24, 2001, which is after Applicants' U.S. filing date of June 14, 2001. Thus, Applicants submit that EP 1148716 A1 of Miyake is an improper reference under 35 U.S.C. § 102(a) or 35 U.S.C. § 102(b). Also, the U.S. filing date of the present application is less than 12 months after the April 5, 2001 filing date of EP 1148716 A1. Thus, EP 1148716 A1 of Miyake is an improper reference under 35 U.S.C. § 102(d). Therefore, the only possible basis of rejection re: EP 1148716 A1 of Miyake is under 35 U.S.C. § 102(e). However, Applicants also note that EP 1148716 A1 of Miyake is not a WIPO application designating the U.S. and, thus, is not a proper reference under 35 U.S.C. § 102(e). Because Miyake was


published after Applicants' U.S. filing date, Applicants submit that the outstanding rejection under 35 U.S.C. § 103(a) is improper.

Furthermore, and the present application of Miyake et al. were, at the time the invention was made, subject to an obligation of assignment to the same person. Thus, for another reason Applicants submit the outstanding rejection under 35 U.S.C. § 103(a) is improper.¹

Accordingly, in light of the previous discussion, Applicants respectfully submit that the present application is in condition for allowance and respectfully request an early and favorable action to that effect.

Respectfully submitted,

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¹ 35 U.S.C. § 103(c) – “Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.”